



Comptroller General
of the United States

236258

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-255630; B-256081; B-256873

Date: August 18, 1994

DIGEST

An October 1992 amendment to the Military Traffic Management Command's Freight Traffic Rules Publication 1A, which discontinued the practice of shipping Department of Defense Unique Commodities as Freight All Kinds (FAK), cannot be applied retroactively to allow a carrier to charge higher rates for shipments in May and June 1990, despite the amendment's April 1990 effective date. See 65 Comp. Gen. 563 (1986). Our prior decision Tri-State Motor Transit Co., B-254372, et al., July 15, 1994, is distinguishable because MTMC had publicly announced, prior to the movement of the wheeled vehicle shipments involved in that decision, that wheeled vehicles would no longer be transported as FAK and that specific nomenclature had to be used.

DECISION

Tri-State Motor Transit Company requests that we review the General Services Administration's (GSA) denial of its claim for additional charges on three Department of Defense (DOD) Government Bill of Lading transactions that moved shipments as Freight All Kinds (FAK) in May and June 1990. We affirm GSA's settlements.

On October 19, 1992, the Military Traffic Management Command (MTMC) issued revised pages 59-62 to its Freight Traffic Rules Publication 1A (MFTRP 1A) which, among other things, modified the rules pertaining to FAK shipments (Items 112 through 116) to provide in each item that a commodity "may not be included as FAK" if it is a commodity "for which a DOD Unique Commodity Code has been assigned by HQMTMC." According to the revision, it was effective April 24, 1990.

¹The transactions are C-8,226,700; C-9,461,118; and C-8,746,858, respectively. Tri-State believes that GBL C-5,593,370, forwarded to us for review on the same date as C-8,746,858, involves the same issue, but the company did not provide a copy of the GBL.

Each shipment in issue involved the transportation of a commodity for which MTMC had assigned a Unique Commodity Code: one was a Stinger Missile Training Set, which is assigned Code 014255; and the other two were aircraft engines, which are classified under Code 120820 Sub 2 or Sub 3. These codes are set out on pages 10 and 11 of DOD's revised instructions for using the Standard Tender of Freight Services (MT Form 364-R), effective June 1, 1989. Lower rates were available under various Tri-State tenders for FAK, but those rates were not available for commodities classifiable only under Code 014255 or 120820 Sub 2 or Sub 3. If Tri-State's tenders were inapplicable, charges had to be based on the higher rates in its Tariff 4065-C.

Tri-State argues that FAK rates cannot be applied to the shipments. Tri-State bases its argument on the revisions to Items 112 through 116 described above and on the revised instructions for using the standard tender. GSA argues, in effect, that there was no policy prohibiting use of FAK on shipments of commodities assigned DOD Unique Commodity Codes until MFTRP 1A was revised in October 1992, and that it is not proper to apply the modification retroactively, as the revisions purported to do. We agree with GSA.

Our recent decision in Tri-State Motor Transit Co., B-254372 et al., July 15, 1994, also involved the application of an FAK routing policy change in the October 1992 revision on MFTRP 1A to already completed shipments.² We did not object to applying the policy because the record showed that MTMC in fact had changed it before the shipments were effected by issuance of a policy letter; the October 1992 revision to MFTRP 1A simply formalized the policy for purposes of the publication.

Here, in contrast, the first time that MTMC announced the policy change was in the MFTRP 1A revision issued after the dates of the shipments; there had been no prior communication in that respect. Thus, the transactions were proper FAK transactions on the dates of shipment, and to apply the October 1992 policy change to them would allow Tri-State charges higher than those available at that time. In our view, that would result in an improper modification to the contract of carriage without a compensating benefit to the government. See 65 Comp. Gen. 563 (1986), where we held that MTMC cannot approve a post-shipment modification that would have the effect of retroactively allowing the

²The policy, issued pursuant to MTMC's broad authority in the area, effectively precluded DOD officials from routing shipments of wheeled vehicles as FAK.

carrier higher charges. No officer or employee of the government can waive, modify or otherwise change contractual relations without the government receiving a benefit in return. Id.; see also, 40 Comp. Gen. 309, 311 (1960); 37 Comp. Gen. 287 (1957).

Accordingly, the October 1992 revision to MFTRP 1A cannot be applied to these shipments. GSA's settlements are affirmed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

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